



# Commonwealth of Massachusetts

## State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



### CONFLICT OF INTEREST OPINION EC-FD-94-2

#### FACTS:

You are a public employee who has been designated to file a Statement of Financial Interest (“SFI”) pursuant to G.L. c. 268B, §1(l) and §5(c). G.L. c. 268B, §5 requires that you disclose certain financial information concerning members of your immediate family.

#### QUESTION:

Does the term “immediate family” as used in G.L. c. 268B, §1(i) include a spouse who does not reside in the reporting person’s household?

#### ANSWER:

No.

#### DISCUSSION:

G.L. c. 268B requires that a reporting person disclose the identity of immediate family members and certain financial information regarding said family members, such as securities, investments, ownership of real property and certain debts, although amounts or value are not required to be given. G.L. c. 268B, §5(g). The statutory definition of “immediate family” is “a spouse and any dependent children residing in the reporting person’s household”. G.L. c. 268B, §1(i).

As you have observed, this definition is susceptible to two different meanings, depending on which noun or nouns the clause “residing in the reporting person’s household” modifies. Under one interpretation, immediate family would include one’s spouse, whether or not the spouse resides with the reporting person and any dependent children who reside in the household. Under the second interpretation, “immediate family” would include a spouse who resides in the household and dependent children who reside in the household. How one defines the members of the immediate family will directly affect the reporting requirements in G.L. c. 268B, §5.

In attempting to ascertain the meaning of this definition, the Commission is mindful of the general canon of statutory and grammatical construction which states that “a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation.” *Young’s Court, Inc. v. Outdoor Advertising Board*, 4 Mass. App. Ct. 130,133 (1976); *Selectmen of Topsfield v. State Racing Commission*, 324 Mass. 309, 312 (1949); *Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 133 (1949); *EC-FD-84-1*. Applying the rule of last antecedent in this case is difficult because it is unclear whether the clause to be modified is “spouse and dependent children” or “dependent children”. If the clause only modifies “dependent children”, a reporting person would have to include information regarding his or her spouse, whether or not the spouse resided in the reporting person’s household. While recognizing that, frequently, legislative history in Massachusetts is scant, we nevertheless turn to a review of the legislative history of G.L. c. 268B for whatever guidance it may provide. In this instance, a review of how the definition of “immediate family” evolved provides insight into the meaning of the definition, and persuades us that the general canon of statutory construction should not be applied because the Legislature intended that the clause “residing in the reporting person’s household” modify both spouse and dependent children.

In 1978, a citizen’s Initiative Petition, House No. 5151, was filed. The purpose of the petition was to establish

an Ethics Commission and to require that certain elected and appointed public employees file financial disclosures on a yearly basis. The Initiative Petition defined immediate family as “a spouse residing in the person’s household and dependent children”.

At the same time as House No. 5151 was assigned to a legislative committee, other pieces of legislation concerning the creation of an Ethics Commission and financial disclosure were introduced by legislators. House No. 1452 (creating an Ethics Commission); House No. 4119; House No. 2088; Senate No. 1089. The Senate bill (Senate No. 1089) and one House bill (House No. 2088) contained definitions of immediate family. The House bill defined immediate family generally as “the employee’s spouse and dependents”. Senate No. 1089 did not provide a definition of the term, but required that “the disclosure statement shall also include the same information with respect to (1) the mother and father of the reporting person if their domicile is the same as that of the reporting person, and (2) with respect to the spouse and dependent children, if any, of the reporting person, if enhancement of the economic interest of the spouse or dependent children would benefit the reporting person ... Said statement shall not apply to a spouse separated from the reporting person” (emphasis added).

Subsequently, a new single draft bill, Senate No. 1540 was passed by the Senate and sent to the House. This bill defined “immediate family” as “a spouse residing in the reporting person’s household and dependent children, if any”. This language was essentially identical to the language in the Initiative Petition.

In the House, Senate No. 1540 was amended by substituting a new bill, House No. 5715. The House provided an expanded definition of immediate family, which was “a spouse residing in the person’s household and dependent children and shall also include the mother and father of the reporting member if their domicile is the same as the reporting member.” This House bill did not change the requirement specified in Senate No. 1540, that the spouse reside in the household.

The Senate non-concurred with House No. 5715 and a conference committee was formed to resolve the differences in the House and Senate bills. A final bill, Senate No. 1626, was introduced by the conference committee, and passed by each branch of the Legislature. Senate No. 1626 contained the present definition of “immediate family”. During the conference committee stage, the inclusion of one’s mother and father was deleted from the definition of immediate family and the clause “residing in the reporting person’s household” was moved to the end of the definition.

We believe that, by moving the “residing clause” to the end of the sentence, the Legislature intended that the clause modify both spouse and dependent children. Each of the Senate bills contained the referenced language or language indicating that a spouse who did not reside with the reporting person was not included in the filing requirements. The House, in House No. 5715, also included the referenced language. Each branch of the Legislature, in approving its respective bills, had approved of the language “spouse residing in the reporting person’s household”. Additionally, the language mirrored the definition in the citizen Initiative Petition. In light of each branch’s action, there is no indication that the conference committee, whose role was to reconcile differences in the bills, was inclined to eliminate the proviso that the spouse reside in the household. Rather, it appears that the conference committee intended to keep the previously agreed upon language that the spouse reside in the household, but narrow the definition of “immediate family” by eliminating a reporting person’s parents and by limiting disclosure of a child’s financial interests to the interests of those dependent children who reside with the reporting person. This is consistent with the general intent manifested in G.L. c. 268B, §5, limiting the nature of the financial interests that are required to be disclosed by immediate family and by not requiring any amount or value to be disclosed regarding those financial interests.

In conclusion, for purposes of the reporting requirements in G.L. c. 268B, “immediate family” includes a spouse who resides in the reporting person’s household and any dependent children residing in the reporting person’s household.

**DATE AUTHORIZED:** September 13, 1994